IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

THE HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.13588 of 2006

Dated: August 22, 2006

Between:

P. Vijay Kumar, S/o. P. Venkappa, aged 31 years,
Occ: NMR, R/o.3-5-4/3, Shivajinagar, Muchiwada,
Narayanpet, Mahabubnagar District.

… Petitioner

And

The Municipal Commissioner, Narayanpet
Municipality, Narayanpet, Mahabubnagar
District, and another.

… Respondents

Order:

Petitioner, by this Writ Petition, seeks Mandamus to declare the action of the second respondent in not absorbing him as permanent employee in the post of Tractor Driver as arbitrary and illegal and a direction to the respondents is sought to reguarize his services in the said post from 29-05-2004.

2. Heard learned counsel for petitioner and learned Standing

Counsel appearing on behalf of the first respondent.

3. The case of the petitioner is that he was appointed as Tractor Driver in the office of Nagar Panchayat, Narayanpet, Mahbubnagar District on 24-05-1999 and since then he has continuously worked as NMR till 25-06-2004. The petitioner claims regularization of his services in the said post in view of his longstanding services. In support of his claim for regularization, he relies on G.O.Ms.No.212, Finance & Planning, dated 22-01-1994. The case of the petitioner is that though there is a permanent vacancy of Tractor Driver in the office of the Nagarpanchayat, respondents are not considering his case for regularization in the said post.

4. This Court, while issuing notice before admission, by its order dated 06-07-2006 passed interim orders to continue the petitioner in service.

5. The first respondent has filed a counter affidavit, along with a petition to vacate the interim orders of this Court dated 06-07-2006, stating that the petitioner has never worked as NMR from 24-05-1999 to 25-06-2004 as claimed by him, but he has in fact worked under a contractor for a short period. It is stated that G.O.Ms.No.212 dated 22-01-1994 is not applicable to the petitioner as he was not in service in the municipality before 25-11-1993; hence he cannot seek regularization of his services. The learned Standing Counsel submits that the petitioner is not in service as on today.

6. Though the petitioner claims that he has worked as NMR, the same has been denied by the first respondent. Merely because the petitioner has worked under a contractor for certain period, he cannot seek directions for regularization of his services in the said post. It is to

be seen, he has not been appointed by the competent authority by following regular procedure contemplated under law. The G.O. aforesaid cannot also be applied to the petitioner, as he was not in service as on 25-11-1993. Moreover, In view of the recent judgment of the Supreme Court reported in **Secretary, State of Karnataka V. Umadevi and others**[1], no direction can be given to regularize the services of the petitioner unless his recruitment was made against regular vacancy in terms of constitutional scheme. In that view of the matter, no direction as sought for can be given. However, if the respondents propose to fill up any vacancies, regular or temporary, by following due procedure under law, they shall consider the case of the petitioner along with other candidates, keeping in mind his past service and record.

7. The writ petition is disposed of with the above observations. There shall be no order as to costs.

JUSTICE R. SUBHASH REDDY.

August 22, 2006
MRR

[1] **(2006) 4 SCC 1**